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9 [Proposed] Counsel for
10 THE OFFICIAL COMMITTEE
11 OF UNSECURED CREDITORS

12 UNITED STATES BANKRUPTCY COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 In re
16 MOUNT DIABLO YOUNG MEN'S
17 CHRISTIAN ASSOCIATION,
18 Debtor.

Chapter 11

Case No. 10-44367-EDJ-11

**APPLICATION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR ORDER TO EMPLOY
COOLEY LLP AS COUNSEL *NUNC PRO TUNC* TO
MAY 11, 2010**

19 **TO THE HONORABLE EDWARD D. JELLEN, UNITED STATES BANKRUPTCY
20 JUDGE:**

21 **PLEASE TAKE NOTICE THAT** the Official Committee of Unsecured Creditors (the
22 "Committee") of Mount Diablo Young Men's Christian Association (the "Debtor") hereby
23 submits this application to retain counsel pursuant to section 1103 of chapter 11, title 11 of the
24 United States Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 2014.
25 The Committee respectfully applies to this Court for the entry of an order, in substantially the
26 form of the proposed Order attached hereto as **Exhibit B**, authorizing the Committee to employ
27 the law firm of Cooley LLP ("Cooley") as counsel *nunc pro tunc* to May 11, 2010.

28 In support of this Application, the Debtors submit the accompanying "*Declaration of
Robert L. Eisenbach III in Support of Application of the Official Committee of Unsecured
Creditors to Employ Cooley LLP as Counsel Nunc Pro Tunc to May 11, 2010*" (the "Eisenbach

1 Declaration”), and respectfully represent as set forth below.

2 **BACKGROUND**

3 On April 16, 2010 (the “Petition Date”), the Debtor filed a voluntary petition for relief
4 under the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the
5 Debtor is continuing to operate its business as a Debtor-in-Possession. No trustee or examiner
6 has been appointed in this case.

7 On May 7, 2010, the Committee was formed by the Office of the United States Trustee
8 (the “U.S. Trustee”), consisting of the following three members: (i) David Deutscher Co.; (ii) The
9 Dean & Margaret Leshner Foundation; and (iii) R.M. Harris Co., Inc.¹ On May 11, 2010, the
10 Committee met and decided that it wished to employ Cooley as its counsel to advise it in these
11 proceedings.

12 The Committee believes that it would be cost effective to retain Cooley as its counsel, and
13 believes that Cooley is well qualified to represent it in this proceeding. Cooley has extensive
14 experience representing official committees of unsecured creditors in Chapter 11 bankruptcy
15 cases in this District, elsewhere in California, and in hundreds of cases throughout the United
16 States. The professional services Cooley will render to the Committee consist of the following:

- 17 • Attend the meetings of the Committee;
- 18 • Review financial information furnished by the Debtor to the Committee;
- 19 • Negotiate a budget and the use of cash collateral;
- 20 • Review and investigate the liens of purported secured parties;
- 21 • Confer with the Debtor’s management and counsel;
- 22 • Coordinate efforts to sell assets of the Debtor in a manner that maximizes the
23 value for unsecured creditors;
- 24 • Review the Debtor’s schedules, statement of financial affairs, and business
25 plan;
- 26 • Advise the Committee as to the ramifications regarding all of the Debtor’s
activities and motions before this Court;

27 ¹ On May 21, 2010, the U.S. Trustee added two additional members to the Committee: (i) City of Oakley and (ii)
28 California YMCA Youth & Government, and on May 25, 2010 added two more members to the Committee: (iii) City
of Clayton and (iv) Play-Well TEKologies, expanding the Committee to seven members.

- File appropriate pleadings on behalf of the Committee;
- Review and analyze the Debtor's financial condition and report to the Committee;
- Provide the Committee with legal advice in relation to the case;
- Prepare various applications and memoranda of law submitted to the Court for consideration and handle all other matters relating to the representation of the Committee that may arise;
- Assist the Committee in negotiations with the Debtor and other parties in interest on any plan of reorganization or other exit strategy for this case; and
- Perform such other legal services for the Committee as may be necessary or proper in this proceeding.

The Committee believes it is necessary to employ Cooley and that such employment is in the best interests of the unsecured creditors of the Debtor's estate.

Cooley has advised the Committee that its fees will be commensurate with fees charged to its other clients. Cooley has also advised the Committee that it intends to make application to the Court for allowance of its fees. The compensation of Cooley for services rendered on behalf of the Committee shall be fixed by this Court after due application herein pursuant to the rules of this Court.

Based upon the Eisenbach Declaration filed contemporaneously herewith, the Committee is satisfied that (i) Cooley represents no interest adverse to the Committee or the Debtor in the matters for which it is to be engaged and that its employment is in the best interest of the estate, (ii) Cooley has no connection with the U.S. Trustee or any other person employed in the Office of the U.S. Trustee, and (iii) Cooley has not been paid any retainer against which to bill fees and expenses.

Cooley intends to apply to the Court for compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and the terms of any administrative order establishing procedures for interim compensation and reimbursement of expenses for professionals and official committee members entered in this case.

1 For professional services, fees are based on Cooley's standard hourly rates, although the
2 rate to be charged by Robert L. Eisenbach III is less than his standard rate. The proposed rates of
3 compensation, subject to final Court approval, are otherwise the customary hourly rates in effect
4 when services are performed by the attorneys, legal assistants and staff who provide services to
5 the Committee. The current hourly rates for attorneys and legal assistants who have already
6 provided services to the Committee in this case are set forth on **Exhibit A**, which is attached
7 hereto. The hourly rates are subject to periodic adjustment.

8 Consistent with the firm's policy with respect to its other clients, Cooley will charge the
9 Committee for all other services provided and for other charges and disbursements incurred in
10 rendering services to the Committee. These customary items include, among other things,
11 photocopying, facsimiles, travel, business meals, computerized research, postage, witness fees,
12 and other fees related to trials and hearings. Internal costs or overhead cost and document
13 production services (including regular secretarial and word processing time), will not be
14 separately charged.

15 **NOTICE, PRIOR APPLICATION AND WAIVER OF BRIEF**

16 Notice of the instant Application is being given to the (i) U.S. Trustee, (ii) counsel for the
17 Debtor, and (iii) any party having filed with the Court a request for notice. Because of the nature
18 of the relief requested, the Committee respectfully submits that no further notice of the relief
19 requested is necessary or required under the circumstances.

20 No prior application has been made in this or any other Court.

21 Cooley submits that the Application does not present novel issues of law requiring the
22 citation to any authority, other than the statutes and rules cited above and, accordingly, submits
23 that no brief is necessary.

24 To the best of the Committee's knowledge, Cooley has no connection with the creditors or
25 any other adverse party or its attorneys except as otherwise noted in the attached Eisenbach
26 Declaration.

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28

1 **WHEREFORE**, the Official Committee of Unsecured Creditors hereby prays that it be
2 authorized to retain and employ Cooley LLP as its counsel and that said firm be paid such
3 compensation as may be allowed by this Court.

4 Dated: May 27, 2010

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

By: /s/ Kathleen Odne
Kathleen Odne

The Dean & Margaret Leshner Foundation
Committee Chair

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EXHIBIT A
BILLING RATES

<u>Attorney</u>	<u>Status</u>	<u>Hourly Rate</u>
Robert L. Eisenbach III	Partner	\$675
Gregg S. Kleiner	Special Counsel	\$575
Alex Velinsky	Associate	\$305
Kris Tsao Cachia	Paralegal	\$210

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EXHIBIT B
PROPOSED ORDER

COOLEY LLP
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GREGG S. KLEINER (141311)
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[Proposed] Counsel for
THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

MOUNT DIABLO YOUNG MEN'S
CHRISTIAN ASSOCIATION,

Debtor.

Chapter 11

Case No. 10-44367-EDJ-11

**[PROPOSED] ORDER AUTHORIZING THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO EMPLOY COOLEY LLP AS
COUNSEL *NUNC PRO TUNC* TO MAY 11, 2010**

This matter coming before the Court on the "*Application of the Official Committee of Unsecured Creditors for Order to Employ Cooley LLP as Counsel Nunc Pro Tunc to May 11, 2010*" (the "Application"), filed by the Official Committee of Unsecured Creditors (the "Committee") of Mount Diablo Young Men's Christian Association (the "Debtor"); the Court having reviewed the Application and the Declaration of Robert L. Eisenbach III in support thereof ("Eisenbach Declaration"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (c) notice of the Application was reasonable and appropriate under the circumstances; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED.

1 2. The Committee is authorized, pursuant to section 327(e) of the Bankruptcy Code,
2 to employ the firm of Cooley LLP ("Cooley") as their counsel *nunc pro tunc* to May 11, 2010, on
3 substantially the terms and conditions set forth in the Application, with compensation to be at the
4 expense of the estates in such amount as the Court may hereafter allow.

5 ***** END OF ORDER *****
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COURT SERVICE LIST

Debtor

Mt. Diablo YMCA
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Debtor's Counsel

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Reno F.R. Fernandez
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U.S. Trustee

Margaret H. McGee
Office of the U.S. Trustee
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Oakland, CA 94612-5217

Request for Notice Parties

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Elissa D. Miller
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Creditors Committee Members

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City of Clayton
Attn: Hank Stratford, Mayor
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COURT SERVICE LIST (CONT'D)

Interested Parties

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